

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

ROBERT ARBAUGH,

Petitioner,

v.

CIVIL ACTION NO. 5:10-cv-00528

DAVID BERKEBILE,

Respondent.

MEMORANDUM OPINION AND ORDER

On April 20, 2010, the Petitioner filed a *Petition for Writ of Habeas Corpus* (Document No. 1). On April 27, 2010, the Petitioner filed an *Addendum to Petitioner's Petition for Writ of Habeas Corpus* (Document No. 7). On May 26, 2010, the Petitioner filed a *Motion for Preliminary Injunction* (Document No. 8).

By *Standing Order* (Document No. 3) entered on April 20, 2010, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On November 8, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document No. 10) wherein it is recommended that this Court dismiss the Petitioner's *Petition for Writ of Habeas Corpus* (Document No. 1) and deny the Petitioner's *Motion for Preliminary Injunction* (Document No. 8).

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or


recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the substance of the findings of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court further **ADOPTS** the recommendation of the Magistrate Judge and **ORDERS** that the Petitioner's *Petition for Writ of Habeas Corpus* (Document No. 1) is **DISMISSED**, and the Petitioner's *Motion for Preliminary Injunction* (Document No. 8) is **DENIED**.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: January 3, 2011


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA